Raleigh Boone Trucking, Inc. *and* United Mine Workers of America, District 17, AFL–CIO. Case 9–CA–34055

April 30, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge and amended charge filed by the Union on July 26 and November 22, 1996, the General Counsel of the National Labor Relations Board issued a complaint on December 5, 1996, against Raleigh Boone Trucking, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On April 7, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On April 9, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 13, 1997, notified the Respondent and its bankruptcy attorney that unless an answer were received by March 19, 1997, a Motion for Summary Judgment would be filed.

Although the Respondent is in bankruptcy,[1] it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co*., 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein.

Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in hauling coal in and around Whitesville, West Virginia. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of $50,000 for services provided to Long Branch Energy, a nonretail enterprise located within the State of West Virginia, which, in turn, during the same time period, in conducting its coal mining operations, purchased and received goods valued in excess of $50,000 at its West Virginia facilities directly from points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The employees described in article 1A of the National Bituminous Coal Wage Agreement of 1993 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since about April 1, 1994, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements between the Respondent and the United Mine Workers of America on behalf of its locals and districts, including the Union, the most recent of which is effective from May 24, 1996, to August 1, 1998. At all times since April 1, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About May 1996 the Respondent ceased providing its employees with health insurance and ceased paying vacation and sick day benefits to its employees. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

[1] The General Counsel's motion indicates that the Respondent filed Chapter 11 Bankruptcy on July 22, 1996, and converted to Chapter 7 Bankruptcy on December 13, 1996.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by unilaterally ceasing to provide health insurance for its unit employees, we shall order the Respondent to restore the employees' health insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally ceasing to pay vacation and sick day benefits to the unit employees, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Raleigh Boone Trucking, Inc., Whitesville, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain with United Mine Workers of America, District 17, AFL–CIO as the exclusive representative of the following employees by unilaterally failing to provide the unit employees with health insurance or failing to pay them vacation and sick day benefits:

> The employees described in article 1A of the National Bituminous Coal Wage Agreement of 1993.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the unit employees' health insurance coverage and make the employees whole for any expenses or loss of earnings ensuing from the Respondent's unlawful failure to provide the unit employees with health insurance coverage and pay them vacation and sick day benefits, since about May 1996, as set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Whitesville, West Virginia, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 26, 1996.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 30, 1997

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain with United Mine Workers of America, District 17, AFL–CIO, as the exclusive representative of the following unit employees by unilaterally ceasing to provide the unit employees with health insurance or failing to pay them vacation and sick day benefits:

The employees described in article 1A of the National Bituminous Coal Wage Agreement of 1993.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore our unit employees' health insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from our unlawful cessation of coverage and for any loss of earnings attributable to our unlawful failure to pay them vacation and sick day benefits, since about May 1996, as set forth in a decision of the National Labor Relations Board.

RALEIGH BOONE TRUCKING, INC.